SUPREME COURT OF THE UNITED STATES.

No. ~~232.~~ 145.

JOHN H. DUVALL, CLAIMANT OF A LOT OF GOODS AND CHATTLES CONSISTING OF MACHINERY, &c., PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

GOVERNMENT PRINTING OFFICE.

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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Whereas at a circuit court of the United States for the fourth circuit in and for the Maryland district, began and held at the city of Baltimore on the first Monday in April, in the year of our Lord one thousand eight hundred and sixty-three—

Present: The Hon'ble R. B. Taney, chief justice of the Supreme Court of the United States; Wm. T. Giles, judge Maryland district; William Price, esq., attorney; Washington Bonifant, esq., marshal; Thomas Spicer, clerk—

Among others were the following proceedings, to wit:

THE CLAIMANT OF A LOT OF GOODS AND CHATTLES, CONsisting of machinery, &c., plaintiff in error,
vs.
THE UNITED STATES, defendants in error.

Be it remembered, that heretofore, to wit, on the 2d day of May, in the year of our Lord one thousand eight hundred and sixty-three, the said claimant, by his attorney, filed in the court here the transcript of a record from the district court of the United States in and for the Maryland district, in the words and of the tenor following, to wit:

2 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore on the first Tuesday in March, in the year of our Lord one thousand eight hundred and sixty-three.

Present: The Honorable William F. Giles, judge of Maryland district; William Price, esq., attorney; Washington Bonifant, esq., marshal; Thomas Spicer, clerk.

Among other were the following proceedings, to wit:

THE UNITED STATES
vs.
A LOT OF GOODS AND CHATTLES, CONSISTING OF MACHInery, &c.

Be it remembered, that heretofore, to wit, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and sixty-three, the United States of America, by William Price, esq., attorney of the United States for the district of Maryland, prosecuted and sued forth out of the said district court here the writ of the United States of America of attachment directed to the marshal of the Maryland district aforesaid, in the words and of the tenor following, to wit:

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal of the Maryland district, greeting:

3 We command you that you attach, seize, take, and safely keep a [SEAL.] lot of goods and chattles, consisting of machinery, &c., to answer the information of the United States of America in a cause of condemnation and forfeiture; and how you shall execute this precept you make known to us in our said district court for the district aforesaid, at the United

States court-room, in the city of Baltimore, on the first Tuesday in March next, and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said district court, the first Tuesday in December, in the year of our Lord one thousand eight hundred and sixty-two.

WILLIAM PRICE.

Issued 24 January, 1863.

THOMAS SPICER, *Clk Dist. Court.*

And the aforesaid United States of America, by their attorney aforesaid, on the day prosecuting and suing forth the aforesaid attachment, filed therein information against the said goods and chattles in form following, to wit:

Information.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the Honorable William F. Giles, judge of the district court of the United States for the district of Maryland:

William Price, attorney of the United States for the district aforesaid, in the name and on behalf of the United States, gives the said judge to understand and be informed that on the 4th day of January, 1863, Charles
4 D. Bowen, captain of the 18th regiment of Connecticut vols., died, seized on Carroll's Island, in the State of Maryland, a valuable lot of goods or merchandize or chattles, consisting in part of machinery and articles pertaining thereto, a list whereof is hereunto annexed, and now hath the same in his custody, as being forfeited to the United States for the cause hereinafter stated; and thereupon the said attorney of the United States doth allege and articulately propound as follows, to wit:

First. That the said lot of goods or chattles, consisting in part of machinery and articles pertaining thereto, so seized as aforesaid, to wit, on the fourth day of January, 1863, at or on Carroll's Island, by the said Charles D. Bowen, was proceeding or being conveyed to that State or that part of Virginia then declared to be in insurrection against the United States.

Second. That the owner or owners of the said goods and chattles were engaged in commercial intercourse with and between the said State, or the said part of Virginia, and the citizens thereof and the citizens of the rest of the United States.

Third. That the said lot of goods and chattels was being transported from the State of Maryland, when seized as aforesaid, to that State, or that part of Virginia then declared to be in insurrection against the United States, under control of insurgents.

Fourth. That the said lot of goods and chattles, when so seized, was being transported from the State of Maryland, and the north side of the
5 Potomac River to the State of Virginia, or the south side of the Potomac River.

Fifth. That the owner or owners of the said lot of goods and chattles, his, her, or their agents, or attorney or employee, did purchase or acquire, sell or give, the said lot of goods or chattels or property with intent to use or employ the same, or suffer the same to be used or employed, in aiding or abetting or promoting the said insurrection or resisting the laws of the Union, or in aiding or abetting some person or persons engaged therein.

Sixth. That the owner or owners of said lot of goods and chattles or property, his, her, or their agent, attorney, or employee, did, knowingly, use or employ the same, or suffer the same to be used or employed, or consent to the use or employment of the same, in aiding or abetting or promoting said

insurrection, or in aiding and abetting some person or persons engaged therein.

Seventh. That all and singular the premises are true, and within the jurisdiction of this court by reason thereof, and by force of the acts of Congress in such cases made and provided, and the rule and regulations of the Secretary of the Treasury, made in pursuance of the acts of Congress, the said lot of goods and chattles hath become and is forfeited to the United States.

Whereupon the said attorney of the United States, in the name and on behalf of the said United States, prays the usual process and motion of this court in this behalf to be made, and that all persons interested in said lot of goods and chattles may be warned to appear, and that for the causes aforesaid, and others appearing, the said lot of goods and chattles
6 may, by definitive sentence and decree of this court, be condemned as forfeited to the United States, according to the form of the statutes of the United States in such cases made and provided, and the rules and regulations made in pursuance of the acts of Congress.

WM. PRICE, *U. S. Dist. Att'y.*

Memorandum of packages contraband seized by Co. H, 18th regiment Conn. vol., at Carroll's Island.

Box 1, card clothing; 2, card clothing; 3, card clothing; 4, card clothing; 5, card clothing; 6, contents unknown, (traveler;) 7, card daffers; 8, contents unknown, (travelers, in part;) 9, contents unknown; 10, reeds; 11, reeds; 12, reeds; 13, reeds; 14, calfskins; 15, belting; 16, stationery; 17, stationery; 18, stationery; 19, stationery; 20, stationery; 21, stationery; 22, envelopes; 23, stationery.

At which mentioned first Tuesday in March, in the year of our Lord one thousand eight hundred and sixty-three, being the day of the return
7 of the aforegoing writ, comes into the district court here the said United States of America, their attorney aforesaid, and the marshal of the Maryland district aforesaid, to wit, Washington Bonifant, gentleman, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

"Attach'd Feb. 25, 1863. Released, by stipulation, March, 1863.
"W. BONIFANT, *U. S. Marshal.*"

And now here, at this day, to wit, the 21st day of February, in the year of our Lord one thousand eight hundred and sixty-three, comes into the district court here John H. Duvall, by George W. Dobbin, his attorney, and files in the circuit court here his claim to the said goods and chattles, in form following, to wit:

Claim.

In the district court United States for Maryland district, 1863.

THE UNITED STATES
vs.
A LOT OF GOODS AND MERCHANDISE SEIZED AT CARROLL'S Island.

The claim of John H. Duvall, owner and claimant of the said goods and machinery, by William Howard, his agent, duly authorized thereto by the said owner.

And now comes the said William Howard, the agent of John Duvall, and says that the said John H. Duvall is the true and bona fide owner of the *the*

said goods and machinery, and that no other person is the owner
8 thereof; and that he, the said William Howard, is duly authorized by the said John W. Duvall to claim the same in his behalf in this suit.

WILLIAM HOWARD.

On the 7th day of March, 1863, appeared personally the above-named William Howard, and was sworn to the truth of the foregoing claim.

JOHN HANAN, *U. S. Com.*

And the said John H. Duvall, claimant as aforesaid, by his attorney aforesaid, filed in the district court here the following pleas:

Pleas.

In the district court U. States for Maryland, March term, 1863.

THE UNITED STATES
vs.
A LOT OF GOODS AND MACHINERY.

1. And now, at this said March term, before said court, comes John H. Duvall, the owner and claimant of said goods and machinery, by George W. Dobbin, his attorney, and having heard the said information read, he says, to the first article in the said information propounded, the said goods were, at the time of the said seizure, stored for safe-keeping in a house, by the license of the owner thereof, and were at rest, and were not in transitu, and were away from any line of commercial intercourse with the State of Virginia, or that part of said State then declared to be in insurrection against the United States, and away from any vessel or vehicle for conveying the same;
9 without this, that the said goods were proceeding or being carried to that State, or that part of Virginia then declared to be in insurrection against the United States, and the said owner and claimant is verify; wherefor he prays judgment that the said goods ought not to be condemned as forfeited to the United States.

2. And for further plea to the said information, and to the second article propounded therein, the said owner and claimant, by his attorney aforesaid, saith that he was engaged in commercial intercourse with and between the said State, or the said part of Virginia and the citizens thereof, and the citizens of the rest of the United States, as is alleged in the said second article of the said information, and of this he puts himself upon the country.

3. And for a further plea to the said information, and to the third article propounded therein, the said owner and claimant, by his counsel aforesaid, says that the said goods were at the time of the said seizure stored for safe-keeping in a house by the license of the owner thereof, and were at rest and were not in transit, and were away from any line of commercial intercourse with the State of Virginia, or that part of said State then declared to be in insurrection against the United States, and away from any vessel or vehicle for conveying the same; without this, that the said goods were being transported from the State of Maryland when seized as aforesaid to that State or that part of Virginia then declared to be in insurrection against the United States, and under the control of insurgents, and this he is ready to verify; wherefore he prays judgment that the said goods
10 ought not to be condemned as forfeited to the United States.

4. And for the further plea to the said information, and to the fourth article propounded therein, the said owner and claimant, by his counsel aforesaid, saith that the said goods were at the time of the said seizure stored for safe-keeping in a house, by the license of the owner thereof, and were at rest, and were not *in transitu*, and were away from any line of com-

mercial intercourse with the State of Virginia, or that part of said State then declared to be in insurrection against the United States, and away from any vessel or vehicle for conveying the same; without this, that the said goods were being transported from the State of Maryland, and the north side of the Potomac River, to the State of Virginia, on the south side of the Potomac River, and this he is ready to verify; wherefore he prays judgment that the said goods ought not to be condemned as forfeited to the United States.

5. And for further plea to the said information, and to the fifth article propounded therein, the said owner and claimant, by his attorney aforesaid, saith that neither he, the said owner, nor his agent, attorney, or employee, did purchase, acquire, sell, or give the said lot of goods, chattels, or property, with intent to use or employ the same, or suffer the same to be used or employed, in aiding, abetting, or promoting the insurrection in the State of Virginia, or that part of said State then declared to be in in-
11 surrection against the United States, or in aiding or abetting some person or persons engaged therein, and of this he puts himself upon the country.

6. And for further plea by the said information, and to the sixth article therein propounded, the said owner and claimant, by his attorney aforesaid saith that he, the said owner of said goods, attorney or employee, did not knowingly use or employ the same, or suffer the same, to be used or employed, or consent to the use or employment of the same, in aiding, abetting, or promoting the insurrection in the State of Virginia, or in that part of said State thereto declared to be in insurrection, or in aiding or abetting some person or persons engaged therein, and of this he puts himself upon the country.

GEO. W. DOBBIN,
Atty for owners and claimant.

And the said United States of America, by their attorney aforesaid, filed in the district court here their replication by the aforesaid pleas in form following to wit:

Replication.

In the district court of the United States for the district of Maryland, March term, 1863.

UNITED STATES
vs.
A LOT OF GOODS, MACHINERY, &C.

And the United States, as to the first plea of the said John W. Duvall, say that they ought not to be barred of their information and condemnation of the said goods and machinery, &c., by anything alleged in the said plea, because they say that the said goods, machinery, &c., were *in transitu*
12 and not stored for safe-keeping and at rest, as alleged in the said plea, and were not away from any line of commercial intercourse with the State of Virginia, or that part of said State declared to be in insurrection against the United States, and away from any vessel or vehicle for conveying the same, but were so housed and placed as to be conveniently shipped and transported whenever and as soon as an opportunity offered to the said State of Virginia or that part of the said State then declared to be in insurrection against the government of the United States, and so the said United States in fact says that the said goods and machinery, &c., were proceeding or being conveyed to that State or that part of Virginia then de-

clared to be in insurrection against the United States, contrary to the acts of Congress in such cases made and provided, and the rules and regulations of the Secretary of the Treasury made in pursuance of the acts of Congress, and of this the said United States put themselves upon the country, &c.

2. And the said United States, as to the plea of the said John H. Duvall by him thirdly above pleaded, say that the United States ought not to be barred of their information and condemnation of the said goods and machinery were in transit and not stored for safe-keeping and at rest as alleged in the said plea, and were not away from any line of commercial intercourse with the State of Virginia, or that part of said State de-
13 clared to be in insurrection against the United States, and away from any vessel or vehicle for conveying the same, but were so housed and placed as to be conveniently shipped and transported whenever and as soon as an opportunity offered to the said State of Virginia, or that part of the said State then declared to be in insurrection against the government of the United States, and so the said United States in fact says that the said goods and machinery, &c., were being transported from the State of Maryland, when seized as aforesaid, to that State or that part of Virginia then declared to be in insurrection and under the control of insurgents, contrary to the acts of Congress in such cases made and provided, and the rules and regulations of the Secretary of the Treasury made in pursuance of the acts of Congress, and of this the said United States put themselves upon the country, &c.

4. And the said United States, as to the plea of the said John H. Duvall by him fourthly above pleaded, say that they, the said United States, ought not to be barred of their information and condemnation of the said goods and machinery, &c., by reason of anything alleged in the said plea, because they say that the said goods and machinery, &c., were *in transitu* and not stored for safe-keeping and at rest, as alleged in said plea, and were not away from any line of commercial intercourse with the State of Virginia or that part of said State declared to be in insurrection against the United States, and away from any vessel or vehicle for conveying the same, but were so housed and placed as to be conveniently shipped and trans-
14 ported whenever and as soon as an opportunity offered, to the said State of Virginia, or to that part of the said State then declared to be in insurrection against the United States government, and so the said United States in fact say that the said goods and machinery, &c., were being transported from the State of Maryland and north side of the Potomac River to the State of Virginia, on the south side of the Potomac River, contrary to the acts of Congress in such cases made and provided, and the rules and regulations of the Secretary of the Treasury made in pursuance of the acts of Congress.

5. And the said United States, as to the plea of the said John H. Duvall by him fifthly above pleaded, and whereof he hath put himself upon the country, doth the like.

6. And the said United States, as to the plea of the said John H. Duvall by him sixthly above pleaded, and whereof he hath put himself upon the country, do the like.

WM. PRICE, *U. S. Dist. Att'y.*

And the said John H. Duvall, claimant as aforesaid, by his attorney aforesaid, filed in the district court here his rejoinder to the replication in form following, to wit :

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In the district court U. S., Maryland, March term, 1863.

THE UNITED STATES
vs.
A LOT OF GOODS, MACHINERY, &c.

And the said owner and claimant, by his attorney aforesaid, as to
15 the replications of the said United States to the first, third, and fourth pleas of him, the said owner and claimant, whereof the said United States puts itself upon the country, saith that he, the said owner and claimant, doth the like.

GEO. W. DOBBIN,
Att'y for owner and claimant.

And the said claimant, by his attorney aforesaid, filed in the district court here his petition and order of court thereon, in form following, to wit:

Petition and order.

In the district court United States for Maryland.

UNITED STATES
vs.
CERTAIN GOODS SEIZED AT CARROLL'S ISLAND, AS FORFEITED to the United States.

The petition of William Howard, agent of John H. Duvall, duly authorized by the said Duvall, owner and claimant of said goods, respectfully ask that he may be allowed to enter stipulations for the same goods, and that to that end a warrant of appraisement may be issued according to the practice in such cases.

GEO. W. DOBBIN, *Att'y for Claimant.*

Order.

In the district court U. S. for Maryland, on the foregoing petition, it is, on this 20th day of February, 1863, ordered that a warrant of appraisement be issued by the clerk of this court to two persons, one to be named by this district attorney of the United States and the other by the attorney for the claimant

WF. F. GILES.

16 The attorney for the United States names James S. Gary; the attorney for the claimants names James Wethered; and therefore the writ of the United States of America of appraisement issued in form following, to wit:

Warrant of appraisement.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To James S. Gary and James Wethered, esq'rs, greeting:

Whereas a certain cause of information moved and prosecuted before the district court of the United States of America against certain goods seized at Carroll's Island as forfeited to the United States, the aforesaid court, on the twentieth day of February, A. D. 1863, ordered a warrant to issue for the appraisement of the said goods, (justice so requiring,) you are there-
[SEAL.] fore by these presents authorized and empowered jointly and severally, and strictly charged and commanded that you faithfully and

justly appraise the said goods according to their value, and that you so appraise and value the same, and that you duly transmit the said appraisement subscribed by you to the aforesaid court, together with these presents, with all convenient speed.

Witness the Honorable William F. Giles, judge of our said district court, the first Tuesday in December, in the year of our Lord one thousand eight hundred and sixty-two.

Issued 26 February, 1863.

THO. SPICER, *Cl'k Dist. C't.*

17 The undersigned appraisers, appointed by virtue of the annexed warrant of appraisement, report to the honorable the district court of the United States for the Maryland district, that, after being duly sworn according to law, they proceeded to appraise and value the goods mentioned in the said warrant of appraisement, and find the same to be worth the sum of twenty-two hundred and forty-eight dollars and eighty-one cents.

JAMES S. GARY. [SEAL.]
JAS. L. WETHERED. [SEAL.]

Sworn to and subscribed before me the 28th day of March, 1863.

THO. SPICER,
Cl'k Dist. C't and U. S. Comm. ex officio.

Inventory of goods appraised seized at Carroll's Island.

300 steel		$388 41
4 dozen calfskins, $28		112 00
12 dozen sheepskins, $9		108 00
700 short cards; 300 short tops; 1,000 H. fillet, 1½ in.—795 ft., at $1		795 00
500 H. 2¼-in. belt, 20	$100	
200 H. 2½-in. belt, 22	44	
		144 00
332 in. travellers		367 50
Case O, No. 16, 29 r'ms note paper, 80	$23 20	
5½ r'ms Durand, 4to, $1 20	6 60	
		29 80
Case C, No. 17. 40 r'ms Chestnut Grove, 4to, $1 12	$44 80	
3 r'ms Durand, $1 20	3 60	
		48 40
I, No. 18, 87 r'ms com'l note, 90		78 75
19, 40 r'ms white ruled, 4to, $1 50		60 00
K, No. 20, 41 M buff envelopes, 75		31 12
M, No. 21, 13 M buff envelopes, 75		9 75
18 E, No. 22, 34 r'ms white laid ruled, 4to, $1 50	$51 00	
10½ r'ms com'l note, 90	9 45	
		60 45
N, No. 23, 8½ M buff envelopes, $1	$8 50	
9½ do. do. 75	7 13	
		15 63
		2,248 81

And now here, at this day, to wit, the eleventh day of March, in the year of our Lord one thousand eight hundred and sixty-three, the said claimant, by his attorney aforesaid, filed in the district court here a stipulation in form following, to wit:

Stipulation.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered, that on this eleventh day of March, in the year of our Lord one thousand eight hundred and sixty-three, personally appeared in the district court of the United States in and for the Maryland district, Christopher L. Mayer and Frederick Albert, of the said district, in their proper persons, and submitted themselves to the jurisdiction of the said district court, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and admistrators, to be bound in the sum of four thousand five hundred dollars, for the claimant of a lot of goods and chattles, consisting of machinery seized at Carroll's Island, unto the United
19 States of America, to perform the final order and decree of the said district court, and in case of an appeal from such final order and decree of the said district court, then the final order and decree of the circuit court of the United States for the fourth circuit, in and for the Maryland district; and in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States, in a certain cause now depending in the said district court, wherein the said United States of America are libellants and the claimants of the said goods, &c., is respondent; and unless they so do, they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods and chattles, lands and tenements, wheresoever found or to be found.

Acknowledged in open court.

THO. SPICER, *Clk.*

Whereupon, for trying the issue aforesaid, it is ordered by the court here that twenty persons from the pannel of petit jurors, returned to the court by the marshal of the Maryland district aforesaid, appear before the court here immediately, by whom, &c., to recognize, &c., because as well, &c.; and thereupon the twenty persons, being so drawn by ballot and written upon two lists, one of which said lists is delivered to the counsel for the respective parties, and the counsel for each of the said parties having stricken out four persons from the said lists, the remaining twelve persons, being called, come, to wit:

20 JURY.—William Brooks, John C. Ninde, Charles Dunlap, Edward R. Burnston, Henry C. Marsh, Charles F. A. Cole, Washington Winn, William Hanna, Thomas Sewell, John Slaymaker, James Jackson, Charles Roberts, who, being empanelled and sworn to say the truth in premises, upon their oath do say that they find therein verdict for the United States.

And the said claimant, by his attorney aforesaid, files in court a motion in arrest of judgment, in form following, to wit:

Motion.

In the district court U. S., Maryland, March term, 1863.

THE UNITED STATES
vs.
A LOT OF GOODS AND MACHINERY SEIZED AT CARROL'S Island.

The owner in this case, by Geo. W. Dobbin, his attorney, move the court in arrest of judgment, because, he says, that the information in this case

does not set forth any legal ground for the condemnation and forfeiture of the goods therein mentioned, and that the said information is not sufficient in law to warrant a judgment of condemnation therein.

GEORGE W. DOBBIN,
Att'y for owner and claimant.

Motion overruled.

Judgment.

Therefore it is considered by the court here that the said goods
21 and chattles be condemned as forfeited to the use of the said United States; and it is further considered by the court here that the said United States recover against the claimant, and Christopher L. Mayer and Frederick Albert, stipulators for the said goods and chattles, the sum of twenty-two hundred and forty-eight dollars and eighty-one cents, current money, the same being the appraised value thereof, as also the sum of by the court here unto the said United States of America, on their assent, adjudged for their costs and charges by them about their suit in this behalf laid out and expended.

And the said claimant in mercy, &c.

Memorandum.—Before the jurors aforesaid withdrew from the bar of the court here, the said claimant, by his attorney aforesaid, tendered to the court here the following bill of exceptions, which was by the court here signed and sealed, and which is in form following, to wit:

Bill of exceptions.

In the district court United States, Maryland district. March term, 1863.

THE UNITED STATES
vs.
A LOT OF GOODS AND MERCHANDIZE SEIZED AT CARROLL'S Island.

At the trial of this cause, the United States, in order to maintain the issue on its part, gave in evidence the proclamation of the President of the United States, dated August 16th, 1861, and then proved by John Walron, a competent witness—

22 *Evidence of John Walron.*

That he lives at Carroll's Island in the employment of William Slater—the driver of his market wagon and farm laborer for some twenty years past; that on Saturday, Jan'y 3, 1863, at the request of John H. Duvall, he hauled in the market wagon of said Slater, from the city of Baltimore to Carroll's Island, eight cases of goods; that he loaded the said goods in Water street, at a house, the number of which he does not know, at about eleven o'clock in the morning, and reached Carroll's Island at about seven o'clock at night; that arriving there he unloaded them, with the aid of said John H. Duvall and another man named Martin Ragan, also in the employment of said Slater, and put them in a tenant house situated on said island, which had been vacant for some years; that he did not know what was in any of the cases, nor did he know whether there was at the time anything else in the house, as he neither went in or looked in; that the said house was distant six or seven hundred yards from the nearest water; that he took the said goods down under the general instructions of Mr. Slater, that he should always haul down anything the gentlemen belonging to the club of Carroll's Island wished hauled whenever asked.

And then proved by Martin Regan, a competent witness—

Evidence of Martin Regan.

23 That he is a farm hand at Carroll's Island, and has lived there for some years; that he assisted, in company with John H. Duvall, and at his instance, to unload the goods hauled down by the witness Walron, and put them in the house spoken of by Walron; that he did not know what was in the said cases, nor did he know whether there was anything else in the house; that there was and is no wharf at Carroll's Island, and vessels loading or unloading there did so by boats or lighters; that there was at the time no vessel or vessels near, nor had he seen any there the day before.

And then proved by William Slater, a competent witness—

Evidence of William Slater.

That he was not at home when the goods seized were brought to Carroll's Island, nor when they were seized; that he knows nothing about the said goods; that the house in which they were seized is distant from the water about as far as Baltimore street is from Lexington street; that a pungy, drawing six feet water, can come within a quarter of a mile of the shore; that his neighbors have told him that goods had been before shipped at Carroll's Island, but not by the party who is claimant here, though he, the witness, knew nothing about it; that Carroll's Island is at the mouth of the Gunpowder River, and binds in part on the Chesapeake Bay shore; that vessels sailing in the bay constantly pass and repass Carroll's Island; that John Walron, his market man, came frequently to his, the witness's, mills, and to town with fish, butter, &c.; that Walron had general orders to bring anything down to the island which any gentleman of the club might desire.

And the said witness being cross-examined—

24 *Cross-examination.*

That if Duvall, the claimant, had asked to send down eight cases for safe-keeping, his, the witness's, general orders to Walron would have justified his brining them.

And then proved by John H. Hoskill, a competent witness—

Evidence of John H. Hoskill.

That he is a manufacturer and seller of cotton mill cards and machinery, in the city of Baltimore; that he has never seen the goods seized in this case since the seizure, and cannot say whether he sold them or not; he sold a lot of goods to one George B. Miller—about $1,000 worth—in November last; does not know whether they went to Carroll's Island or not; has sold considerable, too, since; has sold goods to Duvall, the claimant, for twenty-five years past; have not within the last six months.

And then proved by one Loomis, a competent witness—

Evidence of Loomis.

That he is a lieutenant in Company H, 18 reg. Connecticut volunteers; that his company was stationed six or seven miles from Carroll's Island; was sent by Captain Brown on the 4 January last to seize these goods; he had a description of the house in which they were said to be; went there and found 23 cases; the door was locked, and the cracks and holes about the building stopped up; the windows were boarded up, the sash having been removed; there was a padlock on the door and a board set up against
25 it; he saw no men about; it was dark, so that he could not see.

And then proved by Wm. Carothers, a competent witness—

Evidence of William Carothers.

That he was one of the twenty soldiers who went to seize the goods; found

them at Carroll's Island in a small house, with the door locked and the windows boarded up and the cracks stopped; they opened the door and found the goods; they opened a box or two and found cards, clothing, and paper; saw no one at or about the house; a man rode by in a wagon, a stout man in a white overcoat, and two other men afterwards went to the island.

And then proved by George Jordan, a competent witness—

Evidence of Geo. Jordan.

That he was one of the soldiers who went to seize the goods; found them at Carroll's Island in a house, with the door locked and the windows fastened up; was present when the captain opened the boxes; some of them contained card clothing; saw a boat off in the bay; can't say whether anchored or not; saw a small boat in the cove near the house.

Cross-examined.

And being cross-examined, says: The small boat would carry twenty-five people; was perhaps sixteen feet long; left the boat there when they came away.

And then proved by Thomas Indan, competent witness—

Evidence of Thomas Indan.

That he was one of the soldiers who went to seize the goods; found them in a small house with the windows boarded up and the door locked
26 with a padlock; saw no persons there but a man, who rode by; saw no vessels; it was not night, but before sundown.

And then proved by James S. Garry, a competent witness—

Evidence of James S. Garry.

That he was one of the appraisers of the goods; he could not tell who made them, as manufacturers do not always put their names on them; they were in part card clothing for a cotton mill; such goods are always desirable where there are cotton mills.

The evidence being closed the United States offered the following prayers to the court:

Plaintiffs' prayers.

In the district court of the United States for the district of Maryland.

UNITED STATES
vs.
A LOT OF GOODS, MACHINERY, &C.

1. If the jury shall find from the evidence that the said lot of goods and chattles were proceeding from the State of Maryland, even though said proceeding but for an instant, to that part of Virginia in insurrection against the United States, then they shall find for the plaintiff.

2. If the jury shall find from the evidence that said lot of goods and chattles were shipped with a view to go to that State or to that part of Virginia and in transitu in insurrection, then they shall find for the plaintiff.

27 3. If the jury shall find from the evidence that the said goods and chattles were purchased or acquired by the owner or owners, or his, her, or their agent, attorney, or employee, with intent to use or employ the same, or suffer the same to be used or employed, in aiding, abetting, or pro-

moting said insurrection, or in aiding and abetting some person or persons engaged therein, then they shall find for the plaintiff.

4. If the jury shall find that the said goods and chattles were being transported from the State of Maryland to that State, or that part of Virginia in insurrection against the United States and under the control of insurgents, then they shall find for the plaintiffs.

5. If the jury shall find that the said goods and chattles when seized was being transported from the State of Maryland and north side of the Potomac River to the State of Virginia, on the south side of the Potomac River, then they shall find for the plaintiffs.

Rejected.

And the owner and claimant offered the following prayers:

Claimant's prayers.

1. The owner and claimants, by his counsel, prays the court to instruct the jury that there is no evidence to go to the jury legally sufficient to enable the jury to find for the United States.

2. That if the jury shall find from the evidence that the goods
28 and chattles in question, of John H. Duvall, were taken to Carroll's Island, by a mode of conveyance intended only to convey them there, and were there stored in a house for safe-keeping, away from any vessel or vehicle, for transporting the same to that part of Virginia then in rebellion, then they must find for the claimant, notwithstanding that they may believe that at some future time the said Duvall may have intended to transport the said goods to the State of Virginia.

3. That in order to enable the jury to find for the United States, they must find affirmatively that the said goods were proceeding to Virginia, and that it is not sufficient for them to find that the said goods were going to the rebel States generally.

4. That there is no evidence whatever to go to the jury to sustain the fifth and sixth counts in the information.

Rejected.

All of which, except the claimant's fourth and last prayer, *which* was granted, both of the United States and the claimant, the court rejected, and gave the following instructions to the jury:

Court's instructions.

If the jury shall find from the evidence in this case that the goods seized were proceeding from this city to that part of Virginia which is in insurrection against the United States, and with that view and purpose were deposited at Carroll's Island until a favorable opportunity offered for sending
them to Virginia, they were still, in contemplation of law, in transitu,
29 and subject to forfeiture under the 5 section of the act of July 13th, 1861. But if the jury shall find that they were deposited at Carroll's Island for any other purpose, or to be sent to any other place, they would not be liable to forfeiture in this case. To the refusal to give the claimant's prayers, and to the granting of the said instructions by the court, the said claimant prayed leave to except, and that the court would sign and seal this his bill of exceptions, which is accordingly done on this 18th day March, 1863.

WILLIAM F. GILES. [SEAL.]

And now here, at this day, to wit, the 18th day of March, in the year of our Lord one thousand eight hundred and sixty-three, the said claimants of

the said goods and chattles produced to the said district court here, the writ of the said United States of America for the correcting of errors of and upon the premises, commanding the record and proceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore on the first Monday in April next, which said writ of error is in the words and of the tenor following, to wit:

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judge of the district court of the United States in for the Maryland district, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court before you, between the
30 United States of America, plaintiff, and John H. Duvall, claimant of a lot of goods and chattles, defendant, a manifest error hath happened to the great damage of the said claimant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the circuit court of the United States for the fourth circuit in and for the Maryland district, together with this writ, so that you have the same at Baltimore, on the first Monday in May next, in the said circuit court, then and there to be held, that the record and proceedings aforesaid being inspected, the said circuit court, further to be done therein, by correcting that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable R. B. Taney, chief justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-two.

THOMAS SPICER, *Clk Dist. Ct.*

Issued 4 April, 1863.

The United States of America to William Price, esq., district attorney of the United States in and for the Maryland district, greeting:

31 You are hereby cited and admonished to be and appear at a circuit court of the United States for the fourth circuit, in and for the Maryland district, to be held at the city of Baltimore on the first Monday in May next, pursuant to a writ of error filed in the clerk's office of the district court of the United States in and for the Maryland district, wherein John H. Duval, claimant of a lot of goods and chattles, is plaintiff in error, and the said United States of America are defendant in error, to shew cause, if any there be, why the judgment rendered against the said goods and chattles as in the said writ of error mentioned, should not corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal this first day of May, in the year of our Lord one thousand eight hundred and sixty-three.

WILLIAM F. GILES.

I acknowledge notice of the above citation.

WM. PRICE, *Dist. Att'y U. States.*

In pursuance whereof, and in accordance with the form and effect of the statute in such cases made and provided, a transcrip of the record and pro-

ceedings of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, with the said writ of error, are hereby transmitted to the said circuit court accordingly.

Writ of error bond.

Know all men by these presents that we, Frederick Albert and Christopher L. Mayer, are held and firmly bound unto the United States of
32 *of* America in the just and full sum of three hundred dollars, lawful money of the United States, to be paid to the said United States, their certain attorney, successors, or assigns, to which payment, well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 28th day of April, in the year of our Lord one thousand eight hundred and sixty-three.

Whereas, at a district court of the United States in and for the Maryland district, begun and held at the city of Baltimore on the first Tuesday in March, in the year of our Lord one thousand eight hundred and sixty-three, the said United States of America did obtain a judgment of condemnation and forfeiture against a lot of goods and chattles; and whereas the said John H. Duvall, claimant of the said goods and chattles, hath sued out a writ of error and citation directed to William Price, attorney of the United States for the said district, returnable to the next term of the circuit court of the United States for the fourth circuit, in and for the Maryland district:

Now the condition of the above obligation is such that if the said John H. Duvall, claimant as aforesaid, shall well and truly prosecute with effect his said writ of error, and pay unto the said United States of America their cost and charges adjudged unto them by the said district ceurt, and
33 also all such damages, costs, and charges as may be awarded unto them by the said circuit court, if he, the said John H. Duvall, shall fail to make good his said plea, then the above obligation to be void and of none effect; otherwise, to be and remain in full force and virtue in law.

FREDERICK ALBERT. [SEAL.]
CHRISTOPHER L. MAYER. [SEAL.]

Signed, sealed, and delivered in presence of—

Bond approved 1st May, 1863.

WM. F. GILES.

In testimony that the aforegoing is a true copy taken from the record and proceedings of the district court aforesaid, I hereunto subscribe my
[SEAL.] name and affix the seal of the said district court this second day of May, in the year of our Lord one thousand eight hundred and sixty-three.

THOS. SPICER, *Cl'k Dist. Ct.*

34 And now, at this day, to wit, the 2d day of May, in the year of our Lord 1863, come again into the circuit court here the parties aforesaid by their attorney aforesaid, whereupon as well the records and proceedings aforesaid and the judgment given in form aforesaid, as the matters aforesaid by the said claimants above for errors assigned, being seen and fully understood by the court here, and mature deliberation thereupon had, for it appears to the court here that there is no error either in the record and proceedings aforesaid or in the giving judgment aforesaid; therefore it is considered by the court here that the judgment given in form aforesaid be in all things affirmed and stand in full form and effect, the said causes for error above aforesaid and alleged in any writ notwithstanding. And it is

further considered by the court here that the said United States have execution against the said John H. Duvall, claimant as aforesaid, and his stipulation aforesaid, as well for the appraised value of the said goods and chattles twenty-four hundred and forty-eight dollars and eighty-one cents as the sum of $ for their cost and charges as adjudged unto them in the said district court, as also the sum of $ adjudged unto the said United States of the court here, for their damages, costs, and charges which they have sustained by the delay of the execution of the judgment aforesaid, by the pretence of the prosecution of the said writ of the United States for the correcting of errors by the said John H. Duvall, claimant as aforesaid, upon the premises as aforesaid prosecuted.

And now here, at this day, to wit, on 2d day of May, in the year 1863, the said claimant of the said goods and chattles produced to the said
35 circuit court here the writ of the said United States of America for the correcting of error of and upon the premises, commanding the record and proceeding of the judgment aforesaid, so as aforesaid rendered, with all things concerning the same, to be transmitted to the Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, which said writ of error is in the words and of the tenor following, to wit:

36 UNITED STATES OF AMERICA:

The President of the United States to the judges of the circuit court of the United States for the fourth circuit, in and for the Maryland district, greeting:

[SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you or some of you, between *between* John H. Duvall, claimant of a lot of goods and chattles consisting of machinery, &c., plaintiff in error, and the United States of America, defendant in error, a manifest error hath happened to the great damage of the said John H. Duvall, claimant as aforesaid, as by his complaint appears, we being willing that error hath been should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in January next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Roger B. Taney, chief justice of our Supreme Court, the first Monday in December, eighteen hundred and sixty-two.

THO. SPICER, *Clk Cir't Ct.*

37 The United States of America to William Price, esquire, attorney of the United States for the Maryland district, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at the city of Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fourth circuit, in and for the Maryland district, wherein John H. Duvall, claimant of a lot of goods and chattles, is plaintiff in error, and the United States of America are defendants in error, to show cause, if any there be, why the judgment rendered

against the lot of goods and chattles, consisting of machinery, John H. Duvall, claimant and plaintiff in error, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness my hand and seal this seventh day of December, in the year of our Lord one thousand eight hundred and sixty-three.

WILLIAM F. GILES. [SEAL.]

I acknowledge of the above citation.

WM. PRICE, *Dist. Att'y, U. States.*

38 In testimony that the aforegoing is a true copy taken from the record and proceedings of the circuit court aforesaid, I hereunto [SEAL.] subscribe my name and affix the seal of the said circuit court this ninth day of December, in the year of our Lord one thousand eight hundred and sixty-three.

THO. SPICER, *Cl'k Circ't Ct.*

Filed April 11, 1864.

REC. 232—3

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

JOHN H. DUVALL, plaintiff in error,
vs.
THE UNITED STATES, defendants in error. } No. 145.

IN ERROR TO THE CIRCUIT COURT FOR THE DISTRICT OF MARYLAND.

BRIEF FOR THE UNITED STATES.

JAMES SPEED,
Attorney General.
J. HUBLEY ASHTON,
Assistant Attorney General.

In the Supreme Court of the United States.

DECEMBER TERM, 1865.

JOHN H. DUVALL, claimant of a lot of goods and chattels, consisting of machinery, &c., plaintiff in error,
vs.
THE UNITED STATES, defendants in error. } No. 145.

THE CASE.

This is a writ of error to the circuit court of the United States for the district of Maryland.

The case came into the circuit court on writ of error to the district court, by whom judgment of condemnation was entered against certain goods and chattels claimed by the plaintiffs in error in a proceeding instituted by the United States under the fifth section of the act of July 13, 1861, and the first section of the act of August 6, 1861.

That judgment of the district court having been approved by the circuit court, this writ of error has been brought by the claimant to obtain a review of the judgment of the circuit court.

The proceeding in the district court was an information filed by the Attorney of the United States, alleging that the property in question, consisting of machinery, stationery, and other articles, was seized, on January 4, 1863, at Carroll's

island, in the State of Maryland; and that, at the time of the seizure, it was proceeding from Maryland to that part of the State of Virginia declared, and being, in a condition of insurrection against the United States, and thus became forfeited by virtue of the fifth section of the act of July 13, 1861. (12 Stat., 257.) The information also contained two counts, framed under the first section of the act of August 6, 1861, (12 Stat., 319,) which alleged the purchase and acquisition, use and employment of the property for insurrectionary purposes. (See information, Rec., p. 2.) No questions arise in the case, however, under these counts of the information.

The property having been claimed by one John H. Duvall, plaintiff in error, the case went to trial before a jury on the issues joined between the United States and claimant in the pleadings. (Rec., p. 9.) The issue, under the act of July 13, 1861, was, whether the property in question was proceeding, when seized, from Maryland to that part of Virginia with which commercial intercourse was prohibited by the fifth section of that act?

On the trial both parties requested the court to give certain instructions to the jury. The court refused to give the instructions respectively asked, save the last instruction contained in the claimant's prayers, and left the case to the jury, with general remarks.

The claimant thereupon excepted to the refusal of the court to give the instructions prayed, and to the granting of the instruction given by the court to the jury, and a bill of exceptions was signed. (Rec., p. 13.)

The verdict of the jury was for the United States.

EVIDENCE ADDUCED ON THE TRIAL.

It was proved by the United States that a person named John H. Duvall, the claimant in this case, had been in the

habit for many years of purchasing in Baltimore cotton-mill cards and machinery from a manufacturer and seller of those articles there. (Evidence of Hoskill, Rec., p. 11.) Duvall, it appears, on January 3, 1863, requested an employé of a person residing at Carroll's island, the driver of his market wagon and his farm laborer, to haul, in a market wagon belonging to that person, eight cases of goods from a house in Water street, Baltimore, where they were stored, to Carroll's island. The request was granted. The goods were placed in the wagon in the morning and arrived at the island about seven o'clock at night. Duvall accompanied them, it would seem. They were then unloaded, and, with the assistance of Duvall, were placed, by the driver of the market wagon, in a vacant tenant house which stood on the island. (Evidence of Walron, Rec., p. 10.) The goods thus carried in a market wagon from an unknown house in Water street, Baltimore, and placed by night in a deserted tenant house on Carroll's island, were those proceeded against in this case; and they consisted of articles of *stationery, clothing, and machinery for cotton mills*, valued at more than two thousand dollars. (Rec., p. 8.) The character and condition of this house on the island were referred to by several of the witnesses.

Walron, the driver of the wagon, said that it had been vacant for several years. (Rec., p. 10.) Carothers, one of the soldiers who seized the goods, stated that he found them in this small house "*with the doors locked and the windows boarded up and the cracks stopped.*" (Rec., p. 11.) Loomis, an officer, says "*there was a padlock on the door and a board set up against it.*" (Rec., p. 11.)

The evidence also proved that this house was but a short distance, a few hundred yards, from the Chesapeake bay and Gunpowder river.

Slater, who lived on the island, testified that "*Carroll's island is at the mouth of the Gunpowder river, and binds in part on the Chesapeake bay shore; that vessels sailing in the bay constantly pass and repass Carroll's island; that the house (in which the goods were stored and seized) is distant from the water about as far as Baltimore street is from Lexington street; that a pungy drawing six feet water can come within a quarter of a mile of the shore.*" (Rec., p. 11.)

Regan, a witness, testified that vessels loading or unloading at Carroll's island did so by boats or lighters.

It was further clearly proved that on the night of the seizure a boat was off in the bay, and that a small boat, capable of carrying twenty-five people, and sixteen feet long, was lying in the cove near the house. (Rec., p. 12.)

The person living on the island, in whose employ the driver of the market wagon was, was called as a witness, but he did not know anything about the goods. He said that they were not brought there at his instance, although his driver had authority to convey such things, at the request of any gentleman, to the island. This witness also proved that goods had been before shipped at Carroll's island, although not, *he believed*, by Duvall, the claimant. (Rec., p. 11.)

This was, in substance, the testimony on the part of the United States. The claimant offered no evidence.

ARGUMENT.

We will consider very briefly the several exceptions contained in this record.

The first exception that presents itself is that taken by the claimant to the charge of the court to the jury. It raises a single question of construction under the statute. If that question shall be decided conformably to the view of the right construction of the statute taken by the district and circuit

courts, there can be little or no difficulty concerning the effect of the evidence.

The court, it will be seen, instructed the jury that if they found from the evidence in the case that the goods had an ulterior destination beyond Carroll's island to that part of Virginia in a condition of insurrection, and were deposited at that island to await a favorable opportunity that might offer for sending them to Virginia, and for the purpose of being transmitted there when such an opportunity should present itself, the property was still, in contemplation of law, *in transitu*, and was liable to forfeiture under the fifth section of the act of July 13, 1861, although it was not actually moving toward the insurrectionary State at the time of the seizure.

But the court further told the jury if it should be found by them that the goods were deposited at Carroll's island not for the purpose and with the view of being transmitted to Virginia when a favorable opportunity offered for sending them, or for the purpose and with the view of being sent to any other place, then they were not liable to forfeiture in this proceeding. (Rec., p. 13.)

We are scarcely able to discover any plausible objection to this instruction. The statute forfeits all goods and chattels "*proceeding*" from a loyal to an insurrectionary State or section. The plaintiff in error certainly cannot mean to contend before this court that the statute only embraces cases of property actually and mechanically in a state of motion, and physically advancing toward the interdicted territory, so that a vessel, actually destined with a valuable cargo to some rebellious section, would not be liable to seizure if she should become becalmed anywhere on the voyage, and a quantity of merchandise purchased, consigned, and transmitted for use in the hostile territory, and being actually forwarded by railroad

to its destination, could not lawfully be seized at any railway station where it might temporarily be at rest awaiting the arrival of other cars on which it was intended the property should be carried nearer the place of ultimate destination. It would scarcely seem that such an emasculating view of the scope and effect of this statute, and of the intention of Congress in enacting it, could be gravely and seriously contended for by any one. The statute was meant to be a warrant for the arrest of all merchandise which might quit the place where it originally was with an unlawful destination impressed upon it, and which might have the impression of such a destination still upon it at the time of seizure, whether it was then actually at rest or in motion. All property in that predicament was, within the meaning of the law, "*proceeding*" to the hostile place of destination. The question in cases of this character is always as to the ulterior destination of the property—whether, when it first moved, such destination was a hostile place, and, at the time of seizure, the intention that it should reach, if possible, such a place, still remained with those who controlled its movements? When that question in any case is answered in the affirmative, the liability to seizure and forfeiture must be held to have attached to the property at each and every point intermediate between the place which it may have left and that to which it was intended it should reach.

On this general view of the statute the instruction given by the court to the jury in the present case was based. The jury were told that the fact that these goods were at rest on Carroll's island, deposited in a house there for safe-keeping and protection, was not conclusive on the question of their liability under the statute; that they were to inquire further, and say whether the evidence satisfied them that the owner, or those who controlled their movements, intended to transmit or cause

them to be transmitted to Virginia, when a convenient and favorable opportunity should be presented for sending them, or causing them to be sent into that State; and that if they believed the evidence established such an intention, and showed that the property was deposited on the island in order that the purpose of the owner, or persons in whose control it was, might be carried into effect, the property was in the predicament contemplated by the law. It was then still *in transitu*, "proceeding" to Virginia, within the meaning of the law. The other sentence of the charge merely states the alternative proposition, that if the jury found that any other and different intention and purpose existed with respect to the goods, or if they believed that the goods were designed to be sent anywhere else than to Virginia, in either event the property was not in a position to be held liable for the penalty of the statute. The question thus submitted to the jury was as to the purpose for which the goods had been sent to, and were deposited at, Carroll's island, and the intention existing in respect to their future destination at the time of their arrest. We submit that the instruction given was entirely correct, and announced the proper construction of the statute.

The exception taken on behalf of the claimant to the refusal of the court to grant the first instruction asked, presents the second question in the case. The court was requested to charge that there was no evidence in the case legally sufficient to enable the jury to find for the United States. Assuming that the view of the construction and effect of the statute taken by the court was correct, the refusal to instruct the jury according to this prayer was undoubtedly right.

If the court erred in deciding, in its charge to the jury, that they might, in the view of the case which has been stated, decide that the property was proceeding to the hostile territory, the instruction to which we now refer was properly asked and improperly refused, for there was certainly no evidence that the property was in actual motion towards Virginia.

The present question, therefore, is, whether the record shows evidence sufficient in law to sustain the allegation of the information, under the view of the construction and effect of the statute which has been heretofore considered. We submit that it was incumbent on the United States to establish simply *probable cause* for the prosecution; that such cause was shown by the evidence adduced; and that in the absence of any defence on the part of the claimant, no other legal verdict than the one found could have been arrived at by the jury. But whether or not that view of the proof required in the first instance from the United States be correct, the evidence submitted to the jury, we contend, was abundantly sufficient in law to warrant them in finding that these goods had an unlawful destination to the nearest insurrectionary section; that they had been sent to Carroll's island in prosecution of an intention on the part of the claimant to transport them beyond that place into Virginia; that they were simply awaiting on the island any convenient opportunity that might present itself to the claimant for conveying them further south, in execution of the purpose for which they had been deposited at the spot where they were seized. A glance at the evidence will be sufficient. The jury, in the first place, were entitled to consider the character of the articles contained in these eight cases of goods. They were articles peculiarly fitted and adapted for southern use, and for sale in the market of a blockaded country. Not only the nature and

uses of the articles were to be regarded, but also the circumstance that goods of such diverse and different characters and uses were packed together in one lot and sent together upon the same general destination. This clearly indicated that some extraordinary and singular disposition was intended to be made of them. Then, again, the direction given to the property when it left Baltimore was a most material circumstance, indicating that no northern or lawful southern destination was intended for it. Carroll's island, in the Chesapeake bay, was away from all the established lines of communication between Baltimore and those places, north and south of that city, to which such property might be conceived to have been destined.

The jury were further entitled to consider the location of this island; its position with regard to the highway of the Chesapeake bay leading directly to the insurrectionary section of Virginia; the fact that within a few hundred yards of the house in which the property was stored vessels might easily be loaded, by day or night, without danger of observation or detection.

In connexion with these considerations are brought closely to the attention of the jury the *res gestæ* of the entire transaction of the transportation of such property in a private market wagon from an obscure place in the city of Baltimore, the storing of it by night in a vacant house with doors and windows bolted and covered up, and the absence of explanation touching any of the circumstances attending the case as it appeared in the testimony.

We submit that the evidence excluded every other inference, and negatived every other conclusion, than that it was the intention of the managers of this property to introduce it into the nearest insurrectionary section, and that it had been carried to Carroll's island in pursuance of such a design or

plan. Every circumstance that appeared in the case was explicable by the hypothesis of unlawful intention and destination, and every fact incapable of any rational or reasonable explanation by the theory that an innocent or a lawful intention existed with respect to the future disposition of the property.

The court was undoubtedly right in not withholding the case from the jury. The rule is, that if the circumstantial evidence be such as to afford a *fair and reasonable presumption* of the fact to be tried, it is to be received and left to the consideration of the jury, to whom alone it belongs to determine upon the *precise force and effect* of the circumstances proved, and whether they are sufficiently satisfactory and convincing to warrant them in finding the fact in issue. (1 Phillips on Evidence, Am. ed., 612.) No man can doubt that the evidence in this case afforded a fair and reasonable presumption of the fact of illicit intention in regard to this property existing at the time of its seizure. The jury were entitled, therefore, to determine whether the evidence satisfied them of that fact.

The question arising on the second of the claimant's prayers for instruction has been sufficiently considered in what has been now said concerning the case. The court properly did not instruct the jury, as requested by the second prayer, that although Duvall, the claimant, may have intended to transport the goods to Virginia, he was entitled to the verdict if the jury found that such an intention could not have been

presently executed under the circumstances of the case. We have submitted that the intention of the claimant in carrying the property to, and depositing it upon, Carroll's island was the very *gist* of the case—the *gravamen* of the charge against the property. The fact of his intention was one for the determination of the jury under the evidence, if the views heretofore presented are correct.

The last exception was to the refusal of the court to grant the claimant's third prayer, which was that, in order to enable the jury to find for the United States, they must find affirmatively that the property was proceeding to Virginia, and that it was not sufficient for them to find that it was on its way to the insurgent States generally. (Rec., p. 13.) Such an instruction was properly refused, because even if the jury should have believed that it was not intended that the transportation should cease in Virginia, but that it was designed to send the goods further south than that State, they would have been still entitled to find for the United States, under the information filed, if they were satisfied that it was the intention of the claimant to transmit the property *through* Virginia to the place of ultimate destination. In other words, the fact that they were proceeding to a State beyond Virginia would not necessarily preclude the possibility of their being *in transitu* to Virginia. The court was, therefore, clearly right in refusing to tell the jury that under no circumstances could they find for the government, if they believed the property had an ulterior destination beyond the limits of the insurrectionary section of Virginia.

We think, finally, that the circuit court correctly affirmed the judgment of the district court, and that its judgment should now be affirmed by this court.

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